

**TESTIMONY OF JAY VROOM  
PRESIDENT  
AMERICAN CROP PROTECTION ASSOCIATION  
BEFORE THE SUBCOMMITTEE ON CONSUMER AFFAIRS,  
FOREIGN COMMERCE AND TOURISM  
OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND  
TRANSPORTATION  
JULY 26, 2001**

Mr. Chairman and Members of the Committee:

I am Jay Vroom, President of the American Crop Protection Association (ACPA). ACPA is a national trade association representing the manufacturers, distributors and formulators of virtually all crop protection chemicals and crop biotechnology products used in the United States. I appreciate the opportunity to testify before you this morning on pesticide and biotech seed harmonization issues.

Producing and marketing crop protection and the new array of biotechnology products involves a complex matrix of factors, including crops, competitive chemicals, soil/climate conditions, geographic region, dealer and distributor incentives, volume discounts, patent life, liability costs, minor use considerations, regulatory compliance, regulatory delays, transition to and reinvestment in reduced risk products, research and development costs, the state of the farm economy and a multitude of other considerations, not the least of which is the impact of the uncertain and inconsistent implementation of the Food Quality Protection Act (FQPA).

We are pleased that our member company investments in research and development have provided a vast arsenal of insect, disease and weed control tools for American farmers. Yields of many crops in the U.S. have doubled and tripled since the introduction of modern pesticides and much of this increase is due to the effectiveness of these tools in controlling crop pests. I believe it is important to recognize the benefits of the U.S. crop protection industry and some of our major accomplishments:

- First and foremost is the vast array of tools we provide the American farmer. Today we have more than 9,000 product tolerances on crops from wheat, soybeans, canola, barley to sunflowers, flax, zucchini and kiwi.
- We understand that some growers, especially minor use farmers, would like to have additional registrations and we'll continue to work closely with growers, USDA, EPA and the NAFTA Technical Working Group to accommodate these needs when possible. For the last few years, for example, we have worked very closely

with the canola growers in their quest for more pesticide tools in the U.S. Since this crop is comparatively new in the U.S. compared to Canada, and the U.S.-planted acreage is considerably smaller than in Canada, U.S. growers are eager to gain access to products which have already been registered across the border.

- We are pleased that our work with the growers and EPA is beginning to pay off. Since 1995, a significant number of new pesticide uses have been registered for canola. EPA's current FY 2001 work plan includes nine such uses, of which five have been registered. In addition, credit is due to USDA's IR-4 program for its attention to and actions that have contributed solutions in this minor use area.

There are multiple challenges to the crop protection and biotech industry. We are committed to serving the American farmer by providing the best technology at the farm gate and supporting their farm and rural policy objectives in the legislative and regulatory arenas. The Senate Agriculture Committee is addressing many of these issues and we encourage Congress as they consider the current Farm Bill to help increase exports, build domestic demand, reduce agriculture's regulatory burden and provide affordable, workable risk management tools to growers.

Recent years have certainly taken a toll on U.S. agriculture, with declining prices, natural disasters, and distressed world economies. Many U.S. farmers are experiencing serious financial problems. Congress has provided emergency assistance to farmers, but the pain continues to ripple throughout the farm economy, with ACPA members included in the economic-pain quotient. Doane Agricultural Service reports that total agricultural pesticide sales for all U.S. crops for all pesticide types (including herbicides, insecticides, miticides, fungicides, plant growth regulators, and nematicides) dropped by nearly 10 per cent from \$7.410 billion in 1998 to \$6.691 billion in 1999. When the agriculture economy is stressed, our member companies are negatively impacted also. Our own association sales survey data shows that the total U.S. sales of ACPA member companies declined from \$8.327 billion in 1998 to \$7.837 billion in 2000. Even more dramatic declines in our total sales can be found if we go back to earlier years for comparison.

Relative to the subject of this hearing this morning, I would like to address some of the key variables related to crop protection and crop biotech product pricing.

#### 1. Pesticide Registration Regulatory Processes/United States vs. Canada

The most important factor in pricing differentials results from the significant differences in product testing and registration standards between the United States and Canada. At our own initiative, ACPA formed a special Industry Working Group to help move the regulatory harmonization process forward. We have been working with EPA and their Canadian counterpart PMRA for the last several years to harmonize some of these requirements so that products on both sides of the border would be more equally available, and therefore likely to be more evenly priced. It

seems reasonable that the U.S. and Canada could mutually accept pesticide tolerances, rather than have separate processes and reviews. Although frustrated, we will continue to press our regulatory bodies to move more expeditiously toward harmonization.

In the U.S., fewer than 1 in 20,000 compounds will make it from the discovery laboratory to the farm field; and only after that one chemical passes at least 120 or more federally mandated tests during a period of 10 years or more at a total invested cost in the product's development of upwards of \$150 million. This time and cost is borne completely by the initial registrant before one cent can be generated in revenue. In Canada, a similar chemical would have to undergo sometimes very different batteries of tests and procedures.

EPA implementation practices on FQPA are being exported to Canada where worst-cased default decisions may be adopted in the name of harmonization. This regulatory approach, if adopted, will reduce the number of products available to growers on both sides of the border, and will undoubtedly impact the prices of remaining products. The registration processes in Canada including, testing and data requirements, can be significantly different, sometimes resulting in lesser cost and time between laboratory development and ultimate marketplace sales.

## 2. Harmonization

Under the North American Free Trade Agreement (NAFTA), the governments of Mexico, Canada and the United States formed the Technical Working Group (TWG) on Pesticides in 1996. The scope of work for the TWG has been to develop a coordinated pesticides regulatory framework among NAFTA partners to address trade irritants, build national regulatory/scientific capacity, share the review burden, and coordinate scientific and regulatory decisions on pesticides.

We support the goals of NAFTA TWG which include: 1) Sharing the work of pesticide regulation; 2) Harmonizing scientific and policy considerations for pesticide regulations; 3) Reducing trade barriers; and 4) Maintaining current high levels of protection of public health and the environment while supporting the principles of sustainable pest management.

We believe that through this process, new product registrations can be expedited and duplication of studies and analysis can be reduced, ultimately providing greater market competition in both availability and pricing. In order to get there, however, we need to continue working through the TWG to harmonize guidelines, define the "core regulatory data set," and streamline the EPA registration process.

## 3. "Pesticide Pricing Study on Differentials Between Canada and the United States"

In 1999 USDA and Agri-Food Canada conducted a comprehensive study of products and price differentials between the two countries, as mandated in the U.S.-Canada Record of Understanding. The study was conducted by expert researchers at the North Carolina State University and University of Guelph in Ontario, Canada. The conclusions of the study show that on a cost-per-treated acre basis, Canadian farmers spend far more on chemical inputs in general than farmers in the northern plains states. Selective use of the data may misrepresent the author's findings, and we feel it is important to look at the whole picture.

We believe that this governmental report reflects an accurate snapshot of pricing between the two countries, concluding that some pesticides are higher in the U.S., while others are higher in our neighboring country. We would support this data being updated by a credible governmental body, or its contractors, so a current and accurate assessment can be conducted. Some of the key conclusions from the 1999 Report are summarized below:

- Individual Northern U.S. growers may have higher costs of production than Canadian counterparts, but these have much more to do with non-chemical issues such as land, labor and management costs.
- Some pesticide products have lower prices in Canadian provinces than similar products in North Dakota. Conversely, others are listed as being the opposite: lower priced in ND. The marketplace factors given for price differentials include: differences in patent protection length; differences in market size and costs; differences in farmer demands; differences in availability of alternative products.
- ND growers generally spend less on weed control products than their northern counterparts.
- Frequently used products in Manitoba and Saskatchewan differ from those frequently used in ND or MN.
- There is a difference of US \$3 – 4 on a per treated acre basis, with ND growers spending less than growers in MB or SK.
- Overall, cost-per-treated acre in ND is significantly lower than in Canadian provinces.
- The percent difference that Manitoba growers spend above ND growers by crop was: +209 percent for wheat, +169 percent for barley, +41 percent for canola, +29 percent for potatoes.
- "The estimated impact of purchasing lower priced pesticides in either Manitoba or North Dakota using existing herbicide market shares is small on a per treated acre basis (usually less than US \$0.50 per acre)."

I would also like to refer the subcommittee to the February 26, 1999 GAO report on pesticide pricing in Canada and the U.S., which addresses the marketing complexities both within the U.S. and between the two countries.

#### 4. Cost of Liability

It is important to recognize what a litigious society the U.S. has become and how this burden is factored into market strategies in response to frivolous lawsuits. Much attention has been paid to the notion of tort reform, but little has been accomplished in changing the law or the practice of frivolous lawsuits.

U.S. agrochemical manufacturers understand these conditions all too well. Our companies face a literal barrage of threatened or formal legal actions covering the full range of liability exposures: product performance, environmental damage, personal injury, and so on. Having to defend the underlying business – whether through rigorous court action or out of court settlement – is a real and growing cost of our U.S. business. Some states are home to courts that encourage or allow more frivolous litigation than others, accounting for different underlying cost assumptions in different parts of our domestic markets.

Different crops vary widely in their overall per acre value. The potential liability that accompanies the marketing of pesticides on high-valued crops forces registrants to pay special attention to conditions that might cause crop damage. These factors increase the costs of products on some crops. Highly competitive marketing strategies, including rebates, must also be accounted for in the pricing of products to growers.

#### 5. Labeling Issues of FIFRA and N.D. Department of Agriculture

Section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act governs ways by which state governments can address special local needs of an existing or imminent pest problem for which there is no available federally registered pesticide product. The N.D. Department of Agriculture has contacted several crop protection manufacturers to see if there was interest in applying for 24(c) SLN for products they marketed in Canada, which had same or similar formulations in North Dakota at different prices. If legislation is considered, a minor change to FIFRA Sec 24 (c) might give EPA additional authority to address the concerns we are discussing this morning.

#### 6. Biotech Seeds

Specific to the issue of biotech seed sales, our biotech member companies market seeds on a global basis. Considering their substantial investment in agricultural research, we strongly support protection of their intellectual property rights. The ability to recoup their investment costs based on the market value of their discovery is a right, long championed in the U.S. The January 2000 GAO Report issued last year comparing prices of biotech seeds indicated that a key reason that the price of

biotech soybeans was lower in Argentina than in the U.S. was the lack of patent and other intellectual property protection for these products in Argentina, including the lax enforcement of seed laws there. The pricing differential between the two countries is a result of weak controls that encourage black market seed sales, not marketing practices by the technology providers. In the WTO dispute settlement proceedings against Argentina last year, we were pleased that members of Congress and the U.S. Special Trade Representative urged the inclusion of intellectual property protection for biotechnology.

Last month one of our technology providers announced the elimination of separate technology fees for corn and soybean seed. Starting with the 2002 planting season, growers will make a single payment to the seed company for technology and seed, rather than separate payments to the seed company and the technology provider for the patented technology. This independent decision by one technology company is an illustration of the fact that this market is rapidly evolving and that market forces are functioning.

### Summary

The frustrations around all these issues demonstrate the need to aggressively pursue government-to-government harmonization. Pricing and availability issues cannot be solved by individual state actions on individual products. Our regulatory bodies have an obligation to promulgate clear federal government rules and guidelines, so as to avoid confusion and disruption in the marketplace.

The pricing of pesticides and biotech products takes into account many factors that encompass research and development costs, distribution and marketing costs, crop value and related liability, availability of competitive products, state of the farm economy and available patent life. The most important factor in our marketplace, however, is a healthy customer. As stated earlier in this testimony, our U.S. farmer customer is in dire economic straights, and so is our industry. We hope that the issues of concern at this hearing can be properly put in the larger context—that we have a regulatory system that has enabled development and marketing of crop technology products over the last several decades that have contributed to the U.S. agricultural system being the envy of the world. Inadvertently compromising the positive strength of this system could have profound, long term negative impacts on our entire technology innovation system.

Thank you again for the opportunity to share our views with the Subcommittee. We look forward to working with the Chairman and other Senators to address the U.S. – Canada harmonization concerns discussed here today.